SUBCOMMITTEE: SUBCOMMITTEE #1

HOUSE BILL NO. 2345

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Commerce and Labor

on _____)

(Patron Prior to Substitute--Delegate Toscano)

A BILL to amend and reenact §§ 38.2-1902, 38.2-4214, and 38.2-4319 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-1904.1, relating to rates for individual and certain group health benefit plans; minimum loss ratios.

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1902, 38.2-4214, and 38.2-4319 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-1904.1 as follows:

§ 38.2-1902. Scope of chapter.

A. Except as provided in subsection B of this section, this chapter applies to the classes of insurance defined in §§ 38.2-110 through 38.2-122, 38.2-124 through 38.2-128 and 38.2-130 through 38.2-133.

B. This chapter does not apply to:

1. Insurance written through the Virginia Workers' Compensation Plan pursuant to Chapter 20 (§ 38.2-2000 et seq.) of this title;

2. Insurance on a specific risk as provided in § 38.2-1920;

3. Reinsurance, other than joint reinsurance, to the extent stated in § 38.2-1915;

4. Life insurance as defined in § 38.2-102;

5. Annuities as defined in §§ 38.2-106 and 38.2-107;

6. Accident and sickness insurance as defined in § 38.2-109, except as provided in § 38.2-1904.1;

7. Title insurance as defined in § 38.2-123;

8. Insurance of vessels or craft used primarily in a trade or business, their cargoes, marine builders' risks and marine protection and indemnity;

9. Insurance against loss of or damage to hulls of aircraft, including their accessories and equipment, or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance or use of aircraft;

10. Automobile bodily injury and property damage liability insurance issued to: (i) any motor carrier of property who is required to file such insurance with the Department of Motor Vehicles pursuant to § 46.2-2053 or any amendment to that section; or (ii) any motor carrier of property required by 49 U.S.C.A. § 315, or any rule or regulation prescribed by the Interstate Commerce Commission pursuant to 49 U.S.C.A. § 315, to file such insurance with the Interstate Commerce Commission;

11. Insurance written through the Virginia Automobile Insurance Plan. However, § 38.2-1905 shall apply to insurance written through the Plan;

12. Insurance provided pursuant to Chapter 27 (§ 38.2-2700 et seq.) of this title;

13. Home protection contracts as defined by § 38.2-2600 and their rates until such time as the Commission determines there is sufficient competition in the industry as provided by § 38.2-2608.

C. This chapter shall not apply to any class of insurance written (i) by any mutual assessment property and casualty insurance company organized and operating under the laws of this Commonwealth and doing business only in this Commonwealth or (ii) by any mutual insurance company or association organized under the laws of this Commonwealth, conducting business only in this Commonwealth, and issuing only policies providing for perpetual insurance.

§ 38.2-1904.1. Rates for individual and certain group accident and sickness insurance.

A. As used in this section:

"Anticipated loss ratio" means the ratio of the present value of the future benefits to the present value of the future premiums of a policy form over the entire period for which rates are computed to provide coverage.

"Grandfathered plan" means coverage provided by a health carrier in which an individual was enrolled on March 23, 2010, for as long as such plan maintains that status in accordance with federal law.

"Group health plan" means an employee welfare benefit plan, as defined in § 3(1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(1), to the extent that the plan provides medical

care and including items and services paid for as medical care to employees or their dependents, as defined under the terms of the plan, directly or through insurance, reimbursement, or otherwise.

"Health benefit plan" means any accident and health insurance policy or certificate, health services plan contract, health maintenance organization subscriber contract, plan provided by a MEWA, or plan provided by another benefit arrangement. "Health benefit plan" does not mean accident only, credit, or disability insurance; coverage of Medicare services or federal employee health plans, pursuant to contracts with the United States government; Medicare supplement or long-term care insurance; Medicaid coverage; dental only or vision only insurance; specified disease insurance; hospital confinement indemnity coverage; limited benefit health coverage; coverage issued as a supplement to liability insurance; insurance arising out of a workers' compensation or similar law; automobile medical payment insurance; medical expense and loss of income benefits; or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

"Health insurance coverage" means benefits consisting of medical care, provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care, under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer.

"Health insurance issuer" means an insurance company, or insurance organization (including a health maintenance organization) that is licensed to engage in the business of insurance in the Commonwealth and that is subject to the laws of the Commonwealth that regulate insurance within the meaning of § 514(b)(2) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1144(b)(2). Such term does not include a group health plan.

"Health maintenance organization" means:

1. A federally qualified health maintenance organization;

2. An organization recognized under the laws of the Commonwealth as a health maintenance organization; or

3. A similar organization regulated under the laws of the Commonwealth for solvency in the same manner and to the same extent as such a health maintenance organization.

"Individual accident and sickness insurance" means insurance against loss resulting from sickness or from bodily injury or death by accident or accidental means or both when sold on an individual rather than group basis.

"Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health plan. Coverage that would be regulated as individual market coverage if it were not sold through an association is individual market coverage.

"Member" means an enrollee, member, subscriber, policyholder, certificate holder, or other individual who is participating in a health benefit plan or covered under health insurance.

"Premium" means all moneys paid by an employer, eligible employee, or member as a condition of coverage from a health insurance issuer, including fees and other contributions associated with a health benefit plan.

"Small employer" means, in connection with a group health plan or health insurance coverage with respect to a calendar year and a plan year, an employer who employed an average of at least one but not more than 50 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year. In determining whether a corporation or limited liability company employed an average of at least one individual during the preceding calendar year and employed at least one employee on the first day of the plan year, an individual who performed any service for remuneration under a contract of hire, written or oral, express or implied, for (i) a corporation of which the individual is its sole shareholder or an immediate family member of such sole shareholder or (ii) a limited liability company of which the individual is its sole member or an immediate family member of such sole member, shall be deemed to be an employee of the corporation or the limited liability company, respectively. "Small employer" includes a self-employed individual.

"Small group market" means the health insurance market under which individuals obtain health insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents) through a group health plan maintained by a small employer.

"Student health insurance coverage" means a type of individual health insurance coverage offered in the individual market that is provided pursuant to a written agreement between an institution of higher education, as defined by the Higher Education Act of 1965 (P.L. 89-329), and a health carrier and provided to students enrolled in that institution of higher education and their dependents, and that does not make health insurance coverage available other than in connection with enrollment as a student or as a dependent of a student in the institution of higher education, and that does not condition eligibility for health insurance coverage on any health status-related factor related to a student or a dependent of the student.

B. The Commission is authorized to (i) implement procedures for the filing and approval of rates for individual and certain group accident and sickness insurance policy forms and (ii) establish minimum loss ratios to assure that the benefits provided by such policy forms are or are likely to be reasonable in relation to the premiums charged.

C. This section applies to (i) all individual accident and sickness insurance policy forms, subscriber contracts of hospital, medical or surgical plans, dental plans, and optometric plans delivered or issued for delivery in the Commonwealth and (ii) all health insurance coverage issued in the individual and small group markets. For purposes of this section, a policy form shall include any rider or endorsement form affecting benefits which is attached to the base policy.

D. Every policy, rider, or endorsement form affecting benefits which is submitted for approval shall be accompanied by a rate filing unless such rider or endorsement form does not require a change in the rate. Any subsequent addition to or change in rates applicable to such policy, rider, or endorsement form shall also be filed. Each rate submission shall comply with the requirements of 14VAC5-130.

E. Benefits shall be deemed reasonable in relation to premiums, provided that the anticipated loss ratio of the policy form, including riders and endorsements, is at least as great as provided in 14VAC5-130. The reasonableness of benefits with respect to filings of rate revisions for a previously approved form shall be determined as provided in 14VAC5-130.

F. Each rate revision submission shall include (i) a new rate sheet, (ii) an actuarial memorandum, and (iii) all information required in the National Association of Insurance Commissioner's (NAIC) System for Electronic Rate and Form Filing that complies with the requirements of 14VAC5-130.

G. A health insurance issuer shall consider the claims experience of all enrollees in all health benefit plans, other than grandfathered plans and student health insurance coverage, in the individual market to be members of a single risk pool. A health insurance issuer shall consider the claims experience of all enrollees in all health plans, other than grandfathered plans, in the small group market to be members of a single risk pool. Each plan year or policy year, as applicable, a health insurance issuer shall establish an index rate based on the total combined claims costs for providing essential health benefits within the single risk pool of the individual or small group market as provided in 14VAC5-130. A health insurance issuer may vary premium rates for a particular plan from its index rate for a relevant state market only on the basis of an actuarially justified plan-specific factor permitted under 14VAC5-130.

H. The Commission may prescribe procedures for the effective monitoring of actual experience under any form subject to this section. The Commission may request information subsequent to approval of a policy form or rate revision so that it may determine whether premium rates are reasonable in relation to the benefits provided as specified in in 14VAC5-130.

I. If the Commission finds that the premium rate filed in accordance with this section is not meeting or will not meet the originally filed and approved loss ratio, the Commission may require appropriate rate adjustments, premium refunds, or premium credits (i) as deemed necessary for the coverage to conform with the minimum loss ratio standards established pursuant to clause (ii) of subsection B and (ii) that are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current rates by the health insurance issuer for the coverage. The Commission may take into consideration any previous or expected premium refunds or credits. The Commission may require the submission of detailed supporting documents as necessary to justify the adjustment.

J. The Commission may request information subsequent to approval of a policy form or rate revision so that it may determine whether premium rates are reasonable in relation to the benefits provided as specified in 14VAC5-130.

K. Except as otherwise provided, nothing contained in this section shall be construed to relieve a health insurance issuer of complying with other statutory requirements set forth in this title.

L. The Commission may prescribe procedures for the effective monitoring of actual experience under any form subject to this section.

§ 38.2-4214. Application of certain provisions of law.

No provision of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-218 through 38.2-225, 38.2-230, 38.2-232, 38.2-305, 38.2-316, 38.2-316.1, 38.2-322, 38.2-325, 38.2-326, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, 38.2-700 through 38.2-705, 38.2-900 through 38.2-904, 38.2-1017, 38.2-1018, 38.2-1038, 38.2-1040 through 38.2-1044, Articles 1 (§ 38.2-1300 et seq.) and 2 (§ 38.2-1306.2 et seq.) of Chapter 13, §§ 38.2-1312, 38.2-1314, 38.2-1315.1, 38.2-1317 through 38.2-1328, 38.2-1334, 38.2-1340, 38.2-1400 through 38.2-1442, 38.2-1446, 38.2-1447, 38.2-1800 through 38.2-1836, 38.2-1904.1, 38.2-3400, 38.2-3401, 38.2-3404, 38.2-3405, 38.2-3405.1, 38.2-3406.1, 38.2-3406.2, 38.2-3407.1 through 38.2-3407.6:1, 38.2-3407.9 through 38.2-3407.19, 38.2-3409, 38.2-3411 through 38.2-3419.1, 38.2-3430.1 through 38.2-3454, 38.2-3501, 38.2-3502, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, §§ 38.2-3516 through 38.2-3520 as they apply to Medicare supplement policies, §§ 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3541 through 38.2-3542, 38.2-3543.2, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, Chapter 35.1 (§ 38.2-3556 et seq.), §§ 38.2-3600 through 38.2-3607, Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), and Chapter 58 (§ 38.2-5800 et seq.) of this title shall apply to the operation of a plan.

§ 38.2-4319. Statutory construction and relationship to other laws.

A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-136, 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-216, 38.2-218 through 38.2-225, 38.2-229, 38.2-232, 38.2-305, 38.2-316, 38.2-316.1, 38.2-322, 38.2-325, 38.2-326, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9 (§ 38.2-900 et seq.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, 38.2-1306.1, Article 2 (§ 38.2-1306.2 et seq.), § 38.2-1315.1, Articles 3.1 (§ 38.2-1316.1 et seq.), 4 (§ 38.2-1317 et seq.), 5 (§ 38.2-1322 et seq.), 5.1 (§ 38.2-1334.3 et seq.), and 5.2 (§ 38.2-1334.11 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.),

2 (§ 38.2-1412 et seq.), and 4 (§ 38.2-1446 et seq.) of Chapter 14, Chapter 15 (§ 38.2-1500 et seq.), Chapter 17 (§ 38.2-1700 et seq.), §§ 38.2-1800 through 38.2-1836, 38.2-1904.1, 38.2-3401, 38.2-3405, 38.2-3405.1, 38.2-3406.1, 38.2-3407.2 through 38.2-3407.6:1, 38.2-3407.9 through 38.2-3407.19, 38.2-3411, 38.2-3411.2, 38.2-3411.3, 38.2-3411.4, 38.2-3412.1, 38.2-3414.1, 38.2-3418.1 through 38.2-3418.17, 38.2-3419.1, 38.2-3430.1 through 38.2-3454, 38.2-3500, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3540.2, 38.2-3541.2, 38.2-3542, 38.2-3543.2, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, Chapter 35.1 (§ 38.2-3556 et seq.), Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), and Chapter 58 (§ 38.2-5800 et seq.) shall be applicable to any health maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) except with respect to the activities of its health maintenance organization.

B. For plans administered by the Department of Medical Assistance Services that provide benefits pursuant to Title XIX or Title XXI of the Social Security Act, as amended, no provisions of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-136, 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-216, 38.2-218 through 38.2-225, 38.2-229, 38.2-232, 38.2-322, 38.2-325, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9 (§ 38.2-900 et seq.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, 38.2-1306.1, Article 2 (§ 38.2-1306.2 et seq.), § 38.2-1315.1, Articles 3.1 (§ 38.2-1316.1 et seq.), 4 (§ 38.2-1317 et seq.), 5 (§ 38.2-1322 et seq.), 5.1 (§ 38.2-1334.3 et seq.), and 5.2 (§ 38.2-1334.11 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.), 2 (§ 38.2-1412 et seq.), and 4 (§ 38.2-1446 et seq.) of Chapter 14, §§ 38.2-3401, 38.2-3405, 38.2-3407.2 through 38.2-3407.5, 38.2-3407.6, 38.2-3407.6:1, 38.2-3407.9, 38.2-3407.9:01, and 38.2-3407.9:02, subdivisions F 1, F 2, and F 3 of § 38.2-3407.10, §§ 38.2-3407.11, 38.2-3407.11:3, 38.2-3407.13, 38.2-3407.13:1, 38.2-3407.14, 38.2-3411.2, 38.2-3418.1, 38.2-3418.2, 38.2-3419.1, 38.2-3430.1 through 38.2-3437, 38.2-3500, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3540.2, 38.2-3541.2, 38.2-3542, 38.2-3543.2, Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500

et seq.), and Chapter 58 (§ 38.2-5800 et seq.) shall be applicable to any health maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) except with respect to the activities of its health maintenance organization.

C. Solicitation of enrollees by a licensed health maintenance organization or by its representatives shall not be construed to violate any provisions of law relating to solicitation or advertising by health professionals.

D. A licensed health maintenance organization shall not be deemed to be engaged in the unlawful practice of medicine. All health care providers associated with a health maintenance organization shall be subject to all provisions of law.

E. Notwithstanding the definition of an eligible employee as set forth in § 38.2-3431, a health maintenance organization providing health care plans pursuant to § 38.2-3431 shall not be required to offer coverage to or accept applications from an employee who does not reside within the health maintenance organization's service area.

F. For purposes of applying this section, "insurer" when used in a section cited in subsections A and B shall be construed to mean and include "health maintenance organizations" unless the section cited clearly applies to health maintenance organizations without such construction.

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